

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JFXD TRX ACQ LLC, dba TRX, a Florida
Limited Liability Company,

Plaintiff,

v.

CRANKIT INTERNATIONAL PTY LTD.,
dba CrankIt Fitness, an Australian
Company,

Defendant.

Case No.: 2:23-cv-00298-JHC

PROTECTIVE ORDER

This matter comes before the Court on Plaintiff's Motion for Protective Order. Dkt. # 20. The motion is noted for October 27, 2023, but the Court sees no reason to wait to rule on it as Defendant has defaulted. Dkt. # 15. For the reasons presented in the motion, the Court GRANTS it.

1. PURPOSES AND LIMITATIONS

Plaintiff's request to conduct third-party discovery (ECF 19), discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. This Protective Order will offer non-parties and defendant, should

1 it appear, assurances of privacy and confidentiality of their documents and information in this
2 matter. TRX acknowledges that this agreement is consistent with LCR 26(c). It does not confer
3 blanket protection on all disclosures or responses to discovery, the protection it affords from
4 public disclosure and use extends only to the limited information or items that are entitled to
5 confidential treatment under the applicable legal principles, and it does not presumptively entitle
6 parties to file confidential information under seal.

7 2. **“CONFIDENTIAL” MATERIAL**

8 “Confidential” material shall include the following documents and tangible things
9 produced or otherwise exchanged: customer and client lists; client and worker contracts; client
10 negotiations, offers, counteroffers, acceptances, rejections, and similar pre-contractual
11 communications; worker recruitment policies, procedures, and practices; worker management
12 techniques; recruitment strategy and methodology; advertising and marketing strategies; sales
13 pipeline data; client contacts or identities; temporary worker contacts and lists; security
14 passwords and protocols; price data and other similarly proprietary and/or competitive
15 information.

16 3. **SCOPE**

17 The protections conferred by this agreement cover not only confidential material (as
18 defined above), but also (1) any information copied or extracted from confidential material; (2)
19 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
20 conversations, or presentations by parties or their counsel that might reveal confidential material.

21 However, the protections conferred by this agreement do not cover information that is in
22 the public domain or becomes part of the public domain through trial or otherwise.

23 4. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

24 4.1 **Basic Principles.** A receiving party may use confidential material that is disclosed
25 or produced by another party or by a non-party in connection with this case only for prosecuting,
26 defending, or attempting to settle this litigation. Confidential material may be disclosed only to

1 the categories of persons and under the conditions described in this agreement. Confidential
2 material must be stored and maintained by a receiving party at a location and in a secure manner
3 that ensures that access is limited to the persons authorized under this agreement.

4 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
5 ordered by the court or permitted in writing by the designating party, a receiving party may
6 disclose any confidential material only to:

7 (a) the receiving party’s counsel of record in this action, as well as employees
8 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

9 (b) the officers, directors, and employees (including in house counsel) of the
10 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
11 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
12 designated;

13 (c) experts and consultants to whom disclosure is reasonably necessary for
14 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
15 (Exhibit A);

16 (d) the court, court personnel, and court reporters and their staff;

17 (e) copy or imaging services retained by counsel to assist in the duplication
18 of confidential material, provided that counsel for the party retaining the copy or imaging service
19 instructs the service not to disclose any confidential material to third parties and to immediately
20 return all originals and copies of any confidential material;

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
25 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
26 under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or delay the case development process or to impose unnecessary

1 expenses and burdens on other parties) expose the designating party to sanctions.

2 If it comes to a designating party's attention that information or items that it designated
 3 for protection do not qualify for protection, the designating party must promptly notify all other
 4 parties that it is withdrawing the mistaken designation.

5 **5.2 Manner and Timing of Designations**. Except as otherwise provided in this
 6 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise ordered,
 7 disclosure or discovery material that qualifies for protection under this agreement must be clearly
 8 so designated before or when the material is disclosed or produced.

9 (a) **Information in documentary form**: (*e.g.*, paper or electronic documents
 10 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
 11 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
 12 contains confidential material. If only a portion or portions of the material on a page qualifies for
 13 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making
 14 appropriate markings in the margins).

15 (b) **Testimony given in deposition or in other pretrial proceedings**: the parties
 16 and any participating non-parties must identify on the record, during the deposition or other
 17 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
 18 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
 19 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
 20 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
 21 confidential information at trial, the issue should be addressed during the pre-trial conference.

22 (c) **Other tangible items**: the producing party must affix in a prominent place
 23 on the exterior of the container or containers in which the information or item is stored the word
 24 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
 25 the producing party, to the extent practicable, shall identify the protected portion(s).

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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the designating party's
3 right to secure protection under this agreement for such material. Upon timely correction of a
4 designation, the receiving party must make reasonable efforts to ensure that the material is treated
5 in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
14 regarding confidential designations without court involvement. Any motion regarding
15 confidential designations or for a protective order must include a certification, in the motion or
16 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
17 conference with other affected parties in an effort to resolve the dispute without court action. The
18 certification must list the date, manner, and participants to the conference. A good faith effort to
19 confer requires a face-to-face meeting or a telephone conference.

20 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
21 intervention, the designating party may file and serve a motion to retain confidentiality under
22 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
23 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
24 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
25 other parties) may expose the challenging party to sanctions. All parties shall continue to
26 maintain the material in question as confidential until the court rules on the challenge.

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 2 LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that compels
 4 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party
 5 must:

6 (a) promptly notify the designating party in writing and include a copy of the
 7 subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
 9 issue in the other litigation that some or all of the material covered by the subpoena or order is
 10 subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued
 12 by the designating party whose confidential material may be affected.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 15 material to any person or in any circumstance not authorized under this agreement, the receiving
 16 party must immediately (a) notify in writing the designating party of the unauthorized
 17 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
 18 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
 19 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
 20 Agreement to Be Bound" that is attached hereto as Exhibit A.

21 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 22 MATERIAL

23 When a producing party gives notice to receiving parties that certain inadvertently
 24 produced material is subject to a claim of privilege or other protection, the obligations of the
 25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 26 provision is not intended to modify whatever procedure may be established in an e-discovery

1 order or agreement that provides for production without prior privilege review. The parties agree
2 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

3 10. **NON TERMINATION AND RETURN OF DOCUMENTS**

4 Within 60 days after the termination of this action, including all appeals, each receiving
5 party must return or destroy all confidential material to the producing party, including all copies,
6 extracts and summaries thereof. The parties may agree upon appropriate methods of destruction.

7 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
8 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
9 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
10 work product, even if such materials contain confidential material.

11 The confidentiality obligations imposed by this agreement shall remain in effect until a
12 designating party agrees otherwise in writing or a court orders otherwise.

13 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
14 documents, electronically stored information (ESI) or information, whether inadvertent or
15 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal
16 or state proceeding, constitute a waiver by the producing party of any privilege applicable to
17 those documents, including the attorney-client privilege, attorney work-product protection, or
18 any other privilege or protection recognized by law. This Order shall be interpreted to provide
19 the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b)
20 do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to
21 conduct a review of documents, ESI or information (including metadata) for relevance,
22 responsiveness and/or segregation of privileged and/or protected information before production.
23 Information produced in discovery that is protected as privileged or work product shall be
24 immediately returned to the producing party.

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1 DATED: October 25, 2023

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3 John H. Chun
4 United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Protective Order that was issued by the
6 United States District Court for the Western District of Washington on [date] in the case of JFXD
7 TRX ACQ LLC, v. CRANKIT INTERNATIONAL PTY LTD. I agree to comply with and to be
8 bound by all the terms of this Protective Order and I understand and acknowledge that failure to
9 so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
10 promise that I will not disclose in any manner any information or item that is subject to this
11 Protective Order to any person or entity except in strict compliance with the provisions of this
12 Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Protective Order,
15 even if such enforcement proceedings occur after termination of this action.

17 Date: _____

18 City and State where sworn and signed: _____

19 Printed name: _____

20 || Signature: _____